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Toward an International Standard Of Environment

GEORGE P. SMITH II*

The Environmental Protection Agency has estimated that 26 billion dollars of capital outlays from private industry¹—not including the billions more in operating, interest and depreciation charges—will be required in 1980 in order to meet current domestic air and water standards alone.^{1a} These figures assume an astronomical dimension when read or evaluated in relation to the entire world community's share of international pollution costs.

Throughout the developing nations or Third World, countless millions are threatened by a pervasive poverty that degrades and destroys through hunger and malnutrition, illiteracy, unemployment and uncontrolled disease. Development of these nations stands little chance for real success unless the present distorted distribution of income—both at the national and international

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1. Cameron, *The Trials of Mr. Clean*, FORTUNE, April, 1972, at 103.

1a. Wash. Evening Star & Daily News, Aug. 7, 1972, § A at 9, cols. 1-3. The total cost in the United States for resolving all major pollution problems—air, water, noise, radiation, solid wastes and reclaiming land from surface mining—by 1980 was estimated as being 287 billions of dollars.

levels—is brought into a more equitable and reasonable balance.²

Regretably, both the rich, developed nations and the underdeveloped ones define self-interest in such terms as more wealth, more growth, more power, and even more people. The whole quality of world order reflects the interactions between national governments—with threats (economic and otherwise) and warfare the main instruments of maintaining this order.³ Maximum self-assertion is simply contrary to the collective ecological good.⁴

A “greater generosity” by developed countries toward underdeveloped ones and the recognition of economics as a *moral science* is not—contrary to Professor Gunnar Myrdal’s beliefs—the way to strike an environmental balance and chart real environmental progress.⁵ It is cooperative planning and assistance, rather than unabated generosity, which is the key to maintaining economic growth and preserving the environment for underdeveloped countries.

The concept of ecological trade-off must be explored and more fully refined. For example, industrial countries might establish preferential trade relations with poorer countries that agree to use safe restrictive applications of DDT and other pesticides.⁶ By attempting to develop flexible norms on a case-by-case basis, instead of openly imposing a strict set of uniform international standards, the developing countries are less likely to be thrust with the unbearable burden of choosing between individual economic development and preserving the international environment.⁷

Efforts to go beyond the development of mechanisms designed to prevent or to minimize environmental defects must be undertaken. As the various nations and regions continue to differentiate—both in economic activities and in basic life styles—they must elaborate upon new ways of relating to one another so as to progres-

2. Address by Robert S. McNamara, President, World Bank, U.N. Conference on the Human Environment, Stockholm, Sweden, June 8, 1972.

3. Falk, *Toward a World Order Respectful of the Global Ecosystem*, 1 ENV'T. AFFAIRS 250, 258 (1972).

4. *Id.* at 257, n.2.

5. Address by Professor Gunnar Myrdal, *The Economics of an Improved Environment*, Stockholm, Sweden, June 8, 1972.

6. Falk, *supra* note 3, at 259.

7. See generally, Solari, *Developing Countries and International Regulatory Norms for the Defense of the Environment*, Centre of Initiatives for the Tutelage and Rehabilitation of the Environment, Rome, 1972.

sively become integrated into organic wholes. Differentiation must always be followed by integration,⁸ so as to minimize the threats of war, disease, pollution and the depletion of natural resources.

Separate drives, ambitions and policies must be made compatible with the continuing common life of a single, shared planetary system.⁹ Even where the wealthiest of states has succeeded in transferring resources from richer to poorer citizens, by way of tax, welfare and social insurance systems, this has not ensured the end of poverty at the base of the society.^{9a} And this system does nothing to transfer the wealth to the less developed nations. "Even if \$10,000 a year per capita is a reasonable likelihood for developed societies by the year 2000, for two-thirds of mankind, \$400 a year looks like the utmost reach of optimism."^{9b} Given finite resources, a system of allocation must be established to ensure a more equitable distribution.

In order to muster the human will power required to meet economic, social and aesthetic change in the next few years, there must be a realization of environmental danger, a belief that the danger can be overcome, and a new level of human relationships between all peoples of the world.¹⁰ Yet, environmental *danger* is simply not viewed by the Third World as something to cope with or overcome, since it is much less serious than the problems of economic development. An appreciation of spiritual and aesthetic values must be postponed for the present. It therefore remains for the major developed countries to work with the Third World in reaching a basic level of economic growth and stability which includes a built-in environment awareness factor.

One of the basic principles of the United Nations Charter is that the United Nations will not interfere in the internal affairs of any country. The economic development of a country is, naturally, an internal affair. Yet, by extracting from member nations a commitment to the environment, perhaps an accommodation could be reached. Of course, adherence by signatories to any such agreement or declaration would be a problem.

8. Address by Professor René Dubas, Unity Through Diversity, U.N. Conference on the Human Environment, Stockholm, Sweden, June 6, 1972.

9. Address by Barbara Ward (Lady Jackson), Only One Earth, U.N. Conference on the Human Environment, Stockholm, Sweden, June 6, 1972.

9a. *Id.*

9b. *Id.*

10. Address by Dr. Margaret Mead, A New Chance for Humanity, U.N. Conference on the Human Environment, Stockholm, Sweden, June 8, 1972. See generally, Goldberg, *Mediation and Arbitration of International Disputes*, 1 HOFSTRA L. REV. 9 (1973).

The requirement of a global environmental impact statement, along the lines of that required domestically by the United States in the National Environmental Policy Act,¹¹ to be filed before any country undertakes a project having a "significant impact" on the world environment is an idea with "fascinating possibilities."¹² It is very likely that the principle implicit in such a plan will gain acceptance in the near future.¹³ Its present feasibility, however, is quite another issue, since the international community is simply not ready to grant any one organization the right to comment on every international project.¹⁴ The Third World would be especially reluctant to subscribe to any act which would impede their continued economic development. It might be more practical to establish criteria or "tolerance levels" and then proceed to allow the countries involved to adopt an individual standard according to a risk-benefit theory.¹⁵

THE STOCKHOLM CONFERENCE

It was with the above global problems in mind that on June 5 through June 16, 1972, over 1,200 delegates representing some 113 countries met in Stockholm to draft a blueprint for international progress and cooperation in managing the environment. Russia unfortunately sent no representatives. Together with several hundred non-governmental organization representatives from throughout the world and a press corps numbering over 1,300, the delegates exchanged views on management of the environment, educated one another to the need for protecting the vital resources of the earth and drafted a Declaration on the Human Environment which was subsequently discussed—although not formally ratified—by the United Nations General Assembly during its twenty-seventh session in December, 1972. The General Assembly did, however, adopt a resolution in January, 1973, to provide funds for the United Nations Environment Programme and to form a governing council.

With a conference theme of "Only One Earth," which stressed

11. National Environmental Policy Act, 42 U.S.C. §§ 4321-4347 (1970).

12. Press Conference of William D. Ruckelshaus, Stockholm, Sweden, June 8, 1972.

13. *Id.*

14. *Id.*

15. *Id.*

the interdependence of all living organisms on the planet, the conferees were led by Maurice F. Stone,¹⁶ Canadian Secretary-General, in an attempt to study the final work product of a twenty-seven nation Preparatory Committee. Various intergovernmental working groups and a special Advisory Committee established by former Secretary of State William A. Rodgers, to maximize citizen participation especially in the United States,¹⁷ also contributed to the material considered.

While some delegates viewed the Conference as only a catalyst for action, and by no means an action group which would complete definite answers to hard questions,¹⁸ others saw it as a publication forum.¹⁹ William D. Ruckelshaus, former administrator of the federal Environmental Protection Agency, and a member of the United States delegation, expressed the belief that the Draft Declaration on the Human Environment was the single most important item on the conference agenda, for within it he found a recognition and acceptance of an environmental ethic which would serve as a needed guide to all subsequent national and international environmental actions.²⁰ Shirley Temple Black, also a delegate, attached less significance and direct importance to the meetings, viewing them rather as a market place of ideas with no follow through planned or promoted.

Dr. Barry Commoner, a prominent biologist from Washington University, criticized the Conference for what he believed was failure to come to grips with the economic problems associated with the environmental crisis—specifically the failure to give sufficient

16. Lindsay, *Cleanup Main Maurice Strong*, SATURDAY REVIEW, April 7, 1971, at 43.

17. STOCKHOLM AND BEYOND, REPORT OF THE SECRETARY OF STATE'S ADVISORY COMMITTEE ON THE 1972 UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT (May, 1972).

18. Press Release of Russell E. Train, Chairman, U.S. Delegation to the U.N. Conference on the Human Environment, Stockholm, Sweden, June 6, 1972.

19. Press Release of Shirley Temple Black, Member, U.N. Delegation to the U.N. Conference on the Human Environment, Stockholm, Sweden, June 8, 1972.

20. Statement by William D. Ruckelshaus, Administrator, U.S. Environmental Protection Agency, Wash., D.C., April 27, 1972. A more detailed statement of the priorities set by the United States for the Stockholm Conference can be found in *Safeguarding Our World Environment: The U.N. Conference on the Human Environment*, State Dept. Publication 8630 (IOC 100), March, 1972. Among the priorities were: the need to focus world attention on the problems of the environment; seek a convention on ocean dumping; encourage regional arrangements designed to deal with specific environmental problems; structure a framework for worldwide monitoring in human health, the atmosphere, the oceans and terrestrial environment and foster environmental training and education.

priority to improving the access of needy human beings to resources presently available on the earth.²¹ Others chose to stress the fact that the United States delegation was too inflexible and insensitive in its approach to the problem of pollution²² and did not commit adequate financial support to helping reduce global environmental problems. Indeed, the basic credentials of the U.S. delegation were criticized as deficient, since its membership included only one representative from a non-government environmental organization and not a single environmental scientist.²³

DRAFT DECLARATION ON THE HUMAN ENVIRONMENT

The philosophical views of the conferees with regard to the global environmental crisis are contained in the Draft Declaration on the Human Environment, consisting of a preamble and twenty-six fundamental principles.²⁴ The genesis of this Declaration is to be found in the early formation of the United Nations itself and in the efforts of the General Assembly to structure the recognition of an international standard of human rights by the Universal Declaration of Human Rights. Though not legally binding in character, its early recognition of the importance of dignity for emerging nations was repeated by the conferees' declarations. The basic purpose of the Declaration on the Human Environment is to develop public opinion and stimulate community participation in the environmental sphere. A simultaneous attempt to set objectives for international cooperation and establish guiding principles for world governments in the formulation of environmental policy is also evident.²⁵

Although the United States delegation considered the final draft versions of the Declaration uneven, it recognized the preservation

21. Press Release by Dr. Barry Commoner, Representative, Scientist's Institute for Public Information, Stockholm, Sweden, June 16, 1972; *see generally*, Commoner, *Motherhood In Stockholm*, *HARPER'S MAGAZINE*, June, 1972, at 49.

22. Sterling, *Stockholm: A Summing Up*, *The Washington Post*, June 25, 1972, § B at 6, cols. 3-4; 118 *CONG. REC.* § 8115 (daily ed., May 25, 1972).

23. Kenworthy, *Some Delegates Critical of U.S. Approach to U.N. Conference on Ecology*, *The N.Y. Times*, May 22, 1972, § C at 23, cols. 1-7.

24. App. I, *infra*.

25. *Safeguarding Our World Environment: The U.N. Conference on the Human Environment*, State Dept. Publication 8630 (IOC 100), March, 1972, at 25, 26.

of a number of extremely important principles of conduct in dealing with environmental problems of significant international consequence. Chief among these is Principle 21, which declares that the States have "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."²⁶

Of notable importance are such additional provisions of the Draft Declaration as Principle 2, declaring that the earth's living and non-living resources, and representative samples of natural ecosystems, must be safeguarded for present and future generations; Principle 6 stating that excessive discharge of toxic substances and heat into the environment must be halted to prevent "serious or irreversible damage" to ecosystems; Principle 16, calling for application of appropriate demographic policies where growth rates or concentrations of population are likely to have adverse effects on the environment; and Principle 25, declaring that the states are obligated to "ensure that international organizations play a coordinated, efficient and dynamic role for the protection and improvement of the environment."

Affirming the fundamental right of all men to freedom, equality, dignity and adequate living conditions, the Draft Declaration condemns all policies of racial segregation, discrimination and apartheid.²⁷ It recognizes man's special responsibility to conserve wildlife, within the constraints of economic development,²⁸ and requires that non-renewable resources of the earth be utilized in such a way as to guard against their future exhaustion.²⁹ It calls upon each nation to take all steps necessary to halt the spread of ocean pollution.³⁰ The quality of man's immediate working environment is as important as the total ecology³¹—conditions under which work is undertaken must be compatible with the highest health standards. Stability of prices and adequate earnings are crucial for improved standards of living—compensation for victims of pollution

26. Press Release by U.N., Stockholm, Sweden, June 4, 1972; U.N. Doc. HE/S/12. The Secretary-General of the Conference stated the Draft Declaration must be seen for what it included rather than for what it did not contain. He regarded it as historic if only for the principle that the States accept responsibility for the effect of their activities on the environment of other States.

27. App. I, Principle 1, *infra*.

28. App. I, Principle 4, *infra*.

29. App. I, Principle 5, *infra*.

30. App. I, Principle 7, *infra*; see also, Smith, *Apostrophe to a Troubled Ocean*, 5 IND. L. REV. 267 (1972).

31. App. I, Principle 8, *infra*.

and other environmental damage should be recognized in law.³²

The closest existing model for the structuring of uniform international standards is the International Labor Organization (ILO). The ILO, in its fifty years of existence, has held 130 international conventions and adopted over 130 recommendations on such matters as wage and hour standards, working conditions, the treatment of women and children employees, and fringe benefits.³³ The General Agreement of Tariffs and Trade (GATT) and, more especially, Article XX entitled General Exceptions, has made special provision for the development of regulations necessary to protect human, animal or plant life and health; relating to the conservation of exhaustible resources if such measures are made effective in conjunction with restrictions on domestic production and consumption; or imposed for the protection of national treasures of artistic, historic or archaeological value.³⁴

National product standards are thought to inhibit international trade. This, of course, would spell almost certain ruin for the Third World. Internationally established standards are of little use unless they are, if not uniformly adopted, at least subscribed to widely. With the Third World emphasis on economic development rather than need for environmental equipose, any effort directed toward establishing a uniform or international standard of environmental protection will face great difficulty.

Urban planning is necessary in order to avoid adverse effects on the environment and—at the same time—obtain maximum social, economic, and ecological benefits.³⁵ To this end, national institutions must be created to plan, manage or control resources with a view toward enhancing environmental quality.³⁶ Enlightened opinion can only be assured if careful education of both present and future generations to the problems of the environment is undertaken now.³⁷

32. App. I, Principle 22, *infra*.

33. Valticos, *Fifty Years of Standard Setting Activities By the International Labour Organization*, 100 INT'L LABOUR REV. 201 (1969).

34. General Agreements on Tariffs and Trade (GATT), 61 Stat. (pt. 5) A 11 at A 60, T.I.A.S. No. 1700, 55 U.N.T.S. 187, 262 as amended (1957), 2 U.S.T. 1767, 1786, T.I.A.S. No. 3930, 278 U.N.T.S. 168, 200.

35. App. I, Principle 15, *infra*.

36. App. I, Principle 17, *infra*.

37. App. I, Principle 19, *infra*; see generally PELLAND CASE, REPORT TO

THE ACTION PLAN

The Conference considered 120 recommendations for international action which, taken as a whole, form the basis of the Action Plan. The framework of the Plan provides a new global approach to complex environmental issues. Its aim is to help the international community carry out unprecedented tasks of better environmental management. To this end, it spells out the steps which must be taken in order to identify environmental problems and work toward their solution. The framework consists of three elements (1) a global assessment program, called "Earthwatch"; (2) environmental management activities; and (3) supporting measures.³⁸

Earthwatch endeavors to link established national and international programs and activities in a cooperative approach to the identification and assessment of important environmental problems. Earthwatch includes many programs which are already co-ordinated in varying degrees by components of the United Nations system and which rely mainly on national efforts, both governmental and non-governmental. World Weather Watch (WWW), for example, is co-ordinated by the World Meteorological Organization (WMO) and supported by the Global Atmospheric Research Program (GARP), organized by WMO and the International Council of Scientific Unions (ICSU). Marine pollution programs are carried out by the Inter-governmental Oceanographic Commission and supporting agencies.³⁹

Earthwatch has four major functions: evaluation and review, research, monitoring, and information exchange. The evaluation and review functions provide the basis for decisions within the program as well as for the continuous overview and stimulus necessary to assure that appropriate action is taken.⁴⁰

As vast gaps exist in the knowledge needed to ensure proper management of the environment, a major task would be to identify areas of major international concern and determine just what is known about each. The research activities of Earthwatch call for synthesis and interpretation of scientific and technological data in order to provide direction for future research in such fields as urban transport alternatives and pollution control technology. It also

THE U.S. SENATE, UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT (1972).

38. U.N. Doc. A/Conf. 48/5. See, Press Release, U.N. Doc. UN CHE/HE/S/1 (May, 1972).

39. *Id.*

40. *Id.*

calls for basic research in such areas as: the sources, pathways and effects of major pollutants, and development of methods for predicting natural disasters; major new initiatives in multidisciplinary research; research on ways to adopt and apply existing knowledge to similar problems in various regions of the world; and more extensive involvement of developing countries in environmental research programs.⁴¹

The monitoring functions of Earthwatch include baseline surveys to document the state of various environmental systems in such areas as atmospheric properties, endangered genetic resources, marine pollution and endangered wildlife. Proposals call for a limited number of regional and global networks for observing specific variables such as long-term trends in atmospheric constituents and climate changes, the world's forest cover, fresh water supply, and economic and social indicators. They also call for the standardization of measurement techniques.⁴²

Earthwatch proposals include the creation of an international mechanism for the exchange of information. Information exchange is placed on an equal footing with acquisition of knowledge, research and monitoring and is recognized as an essential vehicle for successful environmental management. Information exchange is of special significance to the developing countries, which frequently rely on the scientific and technical information provided from other parts of the world. Special attention is paid to the transfer of knowledge among regions with common ecological conditions. Existing information, materials, and technologies are frequently of impressive scope and depth and need only be transmitted to those who wait to apply them. In fact, the most significant international measure proposed under the Earthwatch program in the area of natural resource management (inherently a national preoccupation) is the transfer of information. Proposals include sharing of experience on: soil capabilities, degradation and conservation; forest fires, pests and diseases; the management of protected areas and water resources; and the environmental consideration of mining and energy-related activities. In addition, information on pollution control activities, environmentally sound abatement technologies, cost/benefit methodologies, legislative and administrative meas-

41. *Id.*

42. *Id.*

ures and methods of social analysis and environmental application, are all recommended as necessary steps. To respond to a variety of needs, and as a first step in the international exchange of information, an International Referral Service for Sources of Environmental Information has been structured.⁴³ Once totally implemented, the Service will enable the maximum benefit to be gained from the exchange of information about local, national and international research, and legislative and management experiences on environmental matters. It will draw upon the facilities of the International Computing Center located in Geneva.

Environmental management activities, the second element of the Action Plan framework, include: measures for international cooperation to facilitate and support the management of both the environment and man's activities which might have an impact upon it; and, the management of certain environmental resources. Many of these activities can be undertaken only at the national level but may be facilitated through international cooperation. The Action Plan lists key areas where international cooperation can be useful. Greater consideration is to be given to the planned distribution of industrial capacity—at both the national and international levels—as a means of minimizing environmental degradation.⁴⁴

The third element of the Action Plan, measures in support of assessment and management activities, would include education and training, public information, and organization and financing arrangements. The Action Plan report states that there is a critical need for new professionals with multidisciplinary abilities in the natural sciences, engineering and the social sciences. Education at all levels, from pre-school to the university, should endeavor to reflect the environmental dimension. Indeed, the environment should not be considered as a new discipline but a multidisciplinary approach which would pervade curriculum as well as pedagogical methods.⁴⁵

In addition to drafting the Declaration on the Human Environment and the acceptance of its Action Plan, together with the adoption of the idea of an Environmental Fund,⁴⁶ the Conference

43. *Id.*

44. *Id.*

45. *Id.*

46. Prior to the Stockholm Conference, President Nixon proposed a United Nations Fund for the Environment be established, with an initial funding goal of 100 million dollars for the first five years. The monies would be used to increase the capabilities for environmental protection activities within the U.N. after the Conference. The United States pledged up to 40 million dollars on a matching basis to the Fund. See, *The Presi-*

achieved the following: (1) urged completion of a global convention to restrict ocean dumping; (2) called for early completion of conservation conventions, including the World Heritage Trust for natural and cultural treasures and a convention restricting international trade in endangered species; (3) recommended steps to minimize release of such dangerous pollutants as heavy metals and organochlorines into the environment; (4) urged strengthening of the International Whaling Convention and a ten-year moratorium on commercial whaling; (5) called for world programs to collect and safeguard the world's immense variety of plant and animal genetic resources upon which stability of ecosystems and future breeding stocks depend; (6) recommended creation of an Environmental Referral Service to speed exchange of environmental know-how among all countries; (7) urged steps to prevent national environmental actions from creating trade barriers against exports of developing countries; (8) recommended higher priority for environmental values in international development assistance, e.g., more emphasis on conservation, land use planning, and quality of human settlements, and (9) urged greater emphasis on population policy and accelerated aid to family planning in countries where population growth threatens environmental and development goals.⁴⁷

DAI DONG

Dai Dong, a transnational peace effort sponsored by the International Fellowship of Reconciliation,⁴⁸ presented a conference during

dent's 1972 Environmental Program (March, 1972) at 223. See, 118 CONG. REC. (daily ed., June 27, 1972) H.R. CON. RES. 639 at H6203 urging the establishment of the U.N. Fund and Press Release of Christian A. Herter, Jr., March 8, 1972, USUN (72) detailing the U.S. delegation's suggestions on the administration of the Fund.

In a press briefing by U.N. Press Officer, William Powell, June 15, 1972, in Stockholm, Sweden, it was also reported: 3 countries made specific commitments to the Environmental Fund—Japan pledged up to 10% of the target amount if the major developed countries made substantial contributions; Sweden announced its decision to contribute \$5 million dollars and, as noted previously, the United States commitment of \$40 million dollars. The United Kingdom, Denmark, Norway, Spain, Nigeria, Switzerland, Federal Republic of Germany and Botswana were prepared to contribute to the fund without specific amounts and a number of additional countries announced that they supported the establishment of the Fund.

47. See generally, U.S. Information Service Release, Stockholm, Sweden, June 16, 1972.

48. The phrase, *Dai Dong*, is derived from an ancient Chinese concept

the United Nations meetings in Stockholm designed to deal with what it believed were the real issues of environmental preservation: war, hunger, poverty, and overpopulation. Its foremost accomplishment was the presentation of a rebuttal to the United Nations Draft Declaration which it entitled, A Declaration on the Environment.⁴⁹

The Dai Dong Declaration is a somewhat amorphous statement of what is needed to resolve the present environmental crisis on this planet. Recognizing that the present international imbalance has been produced by unrestrained economic practices of development by industrial nations, the Declaration calls upon the peoples of the world to appreciate their basic dependence upon the functions and activities of plants, animals and the oceans.

Dai Dong states that ours is a finite environment with finite resources and calls upon the industrialized countries to place a curb on continued technological advancement. While not totally rejecting technology *per se*, the Declaration proposes that the thrust of technology be restructured so as to minimize stress to the environment. Military technology is a central cause of pollution and resource depletion. All efforts should be directed toward seeking an abolition of war.

On balance, the United Nations Declaration is noticeably less "war liability oriented" and more balanced in its statement of principle and responsibility for preserving the environment than is the Dai Dong Declaration. Its Action Plan—totally lacking in Dai Dong—offers a real blueprint for progress. Noble rhetoric aside, it will only be human commitment to environmental preservation that will bring equilibrium to the environment. Economic growth versus the need for ecological preservation will be an extremely difficult choice for some countries to make.

PROGRESS AND IMPLEMENTATION

The United Nations General Assembly adopted in December,

of a world in which "not only a man's family, not only a man's children, but all the world is his family, and all children are his." *Statement of Purpose*, Dai Dong, Stockholm, Sweden, June 10, 1972.

49. The Declaration on the Environment is a much more philosophically oriented document than that of the United Nations. While offering few solutions, its concern for the problems created by warfare are noteworthy. The independent conference took less notice of the sovereignty aspects of separate states than did the U.N., preferring to see the environment as indivisible. Hence, a separate conference was decided upon since the U.N. has a major stake in maintaining state individuality.

1972, eleven varying resolutions on the human environment.⁵⁰ An Environmental Secretariat was established to administer the Action Plan approved by the Stockholm Conference and Nairobi, Kenya, was selected as its operating site. The United Nations Environment Program (UNEP) thus becomes the first major U.N. body (Secretariat) to be located outside Europe or North America.

While a fifty-eight member governing council was established to coordinate and seek ways to implement the principles of the Draft Declaration on the Human Environment, the General Assembly chose not to formally vote on the Draft itself. Anticipating strong opposition from the Third World over certain principles—particularly numbers 20 and 21—and attendant responsibilities relative to environmental conservation embodied in the Draft Declaration, the General Assembly wisely elected to avoid a confrontation. They implemented the work of the Stockholm Conference through adoption of its Action Plan and thereby placed the proverbial cart before the donkey.

The selection of Nairobi as the headquarters of the Environmental Secretariat has come under marked criticism because it is maintained that geographical placement and isolation of Nairobi from the rest of the world will greatly impede the supervisory or "watch-dog" activities of the Secretariat.⁵¹ A rather obvious concession was made to the Third World in selecting the site for Environmental Headquarters. Through direct involvement in global environmental management, perhaps the nations of the Third World will better recognize the vital role they must assume as full and responsible members of the United Nations. A realization of this

50. Resolutions 2994 through 3004 (XXVII), U.N. RECORD OF THE MONTH at 72-76. Resolution 2995 emphasized that in the exploration, exploitation and development of their natural resources, States must not produce significant harmful effects in zones situated outside their national jurisdiction. Resolution 2997 was in four parts and dealt mainly with the financial plan for operations of the U.N.'s environmental program. It also established a 58-member governing council for environmental programs comprised of 16 seats for African States; 13 seats for Asian States; 10 for Latin America; 13 for Western Europe and other States and 6 seats for the Eastern European States. In Resolution 3002, the Assembly emphasized its awareness that the objectives of the environmental program might well constitute a necessary part of the process of accelerating the economic development of the developing countries and should therefore be of special consideration to all such economic plans.

51. 42 RESOURCES 15 (Jan. 1973).

cooperative role will enable the work of the Stockholm Conference to be totally implemented by ratification of the Draft Declaration in an expeditious manner. Meanwhile, funding remains secure and acts as de facto ratification.

The Conference and the United States delegation have been criticized for their joint failure to debate the issue of ecocide and for the Conference's failure to condemn "imperialist destruction and plunder" (in Viet Nam).⁵² China was a front leader on both issues.⁵³ Defining ecocide as the deliberate destruction of a physical or cultural environment,⁵⁴ the question was put quite simply: Can war be separated from the environment and a discussion of its survival? It was repeatedly maintained that there could be no separations of the two topics⁵⁵ and that war was in fact the greatest modern environmental problem.⁵⁶

Since the initial conference, some progress has been made in actually implementing many of the principles enunciated, above and beyond funding and site selection. Earthwatch remains the focal point for planning and implementing the UNEP projects. In 1974, a budget of 18 million dollars⁵⁷ was allocated to develop the environment information system which would provide exchange tools among nations. The global monitoring of pollution has been increased to include energy conservation considerations as an added priority.

At the second session of the UNEP Governing Council in March, 1974, the group endorsed the programmatic approach and agreed on various world centers to carry out the activities. In addition, selected areas of priority were chosen which included: development

52. See, U.N. Press Release, Stockholm, Sweden, June 10, 1972, U.N. Doc. HE/S/54.

53. *Id.*

54. Statement by Dr. Barry Commoner, Stockholm, Sweden, June 17, 1972. See also, Statement of Olaf Palme, Prime Minister of Sweden, Stockholm, Sweden, June 6, 1972, where he said: "The immense destruction brought about by indiscriminate bombing, by large scale use of bulldozers and herbicides is an outrage sometime [sic] described as ecocide, which requires urgent international attention. It is shocking that only preliminary discussions of this matter have been possible. . . . We fear that the active use of these methods is coupled by a possible resistance to discuss them."

55. Press Conference of Indira Ghandi, Prime Minister of India, Stockholm, Sweden, June 16, 1972.

56. Palme, *supra*, note 54. The Prime Minister further noted in his welcoming speech that: ". . . [W]ar is the worst destroyer of our environment. This has always been the case, but modern techniques of war extend the threat to coming generations and can rob them of their future Environmental problems can be solved . . . but . . . only in a world at peace."

57. *Earth Monitored from Nairobi*, Wash. Post, June 21, 1974, § B at 7, cols. 1-2.

of environmentally sound technology for human settlements; low cost building techniques; water and waste problems; technological and social solutions to human settlements problems; rural development; endangered species preservation; conservation of wetlands and genetic resources; management of arid and semi-arid lands and tropical forest ecosystems; and, registry of potentially toxic chemicals.⁵⁸

The Governing Council also reiterated that the function of the UNEP fund should be "primarily that of a catalyst in providing initial financing for the development of program activities"⁵⁹ This view underscores the belief within the United Nations that the individual sovereignty of states should be preserved, allowing each nation to utilize the funds as an additional resource rather than as a dependent factor. UNEP's function remains one of coordination rather than interference. A third session of the UNEP Governing Council will be held in February, 1975.

CONCLUSION

Prime Minister Indira Ghandi has maintained that no matter how many disappointments were recorded in the past for the United Nations,⁶⁰ it must continue to meet "again and again," simply because no viable alternative forum exists for resolving international problems.⁶¹ The question of whether the United Nations itself is capable of initially handling or structuring the area of global pollution has become moot since the Stockholm Conference actions and proposals. There should be a "sharing of responsibility" in this area by the United Nations, wherever feasible, as implementation of the Stockholm blueprint is undertaken.⁶²

In the area of ocean pollution, such a sharing is being accomplished by the Center for the Study of Democratic Institutions and its incorporated organization, *Pacem In Maribus*, on the Island of

58. 1 UNEP News, No. 1 June, 1974, at 1.

59. UNEP NGO News, June, 1974, at 1.

60. St. John, *The U.N. Deserves a Decent Burial*, The N.Y. Times, Nov. 13, 1971, § M at 31, cols. 5-6.

61. Ghandi, *supra*, note 55.

62. Interview with Christian A. Herter, Jr., Stockholm, Sweden, June 13, 1972; interview with David R. Brower, Stockholm, Sweden, June 7, 1972.

Malta.⁶³ *Pacem In Maribus* has proven to be a vital force in shaping a constructive ocean conservation policy.⁶⁴ There is every reason to believe that it will continue to serve a dynamic role in the work of the United Nations both independently and as a partner.

The central purpose of the Stockholm Conference was to focus world attention on the problems of environmental preservation. There can be little doubt that this simple goal was attained. Only time will demonstrate whether this notoriety was a permanent building block toward resolving the serious problems of the environment or just a fleeting summer "happening" in the Venice of Scandinavia. There are some who believe the Conference should be likened to a theological meeting simply because it prompted a debate on the basic question of man's existence or *raison d'être*.⁶⁵ Others believe it was here that man first began to understand that his limitless capacity to innovate must take place within nature and not outside of it.⁶⁶ In the final analysis, it can only be hoped that the past record of environmental degradation is not a prologue to the future.

63. See, Smith, *Apostrophe to a Trouble Ocean*, 5 IND. L. REV. 267 (1972).

64. *Id.*

65. Statement by Dr. Eugene C. Blake, General Secretary, World Council of Churches, Stockholm, Sweden, June 4, 1972.

66. Address by Kurt Waldheim, Secretary General of the U.N., U.N. Conference on the Human Environment, Stockholm, Sweden, June 5, 1972.

APPENDIX I

DECLARATION OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT

The United Nations Conference on the Human Environment,

Having met at Stockholm from 5 to 16 June 1972,

Having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment,

I

Proclaims that:

1. Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights—even the right to life itself.

2. The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments.

3. Man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In our time, man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment.

4. In the developing countries most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human

existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment. For the same purpose, the industrialized countries should make efforts to reduce the gap themselves and the developing countries. In the industrialized countries, environmental problems are generally related to industrialization and technological development.

5. The natural growth of population continuously presents problems for the preservation of the environment, and adequate policies and measures should be adopted, as appropriate, to face these problems. Of all things in the world, people are the most precious. It is the people that propel social progress, create social wealth, develop science and technology and, through their hard work, continuously transform the human environment. Along with social progress and the advance of production, science and technology, the capability of man to improve the environment increases with each passing day.

6. A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes. There are broad vistas for the enhancement of environmental quality and the creation of a good life. What is needed is an enthusiastic but calm state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with nature, a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development.

7. To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions. International co-operation is also needed in order to raise resources to support the developing countries in carrying out their responsibilities in this field. A growing class of environmental problems, because they are regional or global in extent or because they affect the common international realm, will require extensive co-operation among nations and action by international organizations in the common interest. The Conference calls upon Governments and peoples to exert common efforts for the preservation and improvement of

the human environment, for the benefit of all the people and for their posterity.

II

Principles

States the common conviction that:

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating *apartheid*, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Principle 2

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Principle 3

The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.

Principle 4

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

Principle 5

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.

Principle 6

The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage

is not inflicted upon ecosystems. The just struggle of the peoples of all countries against pollution should be supported.

Principle 7

States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

Principle 8

Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

Principle 9

Environmental deficiencies generated by the conditions of underdevelopment and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required.

Principle 10

For the developing countries, stability of prices and adequate earnings for primary commodities and raw materials are essential to environmental management since economic factors as well as ecological processes must be taken into account.

Principle 11

The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

Principle 12

Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose.

Principle 13

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and co-ordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

Principle 14

Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.

Principle 15

Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all. In this respect, projects which are designed for colonialist and racist domination must be abandoned.

Principle 16

Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development.

Principle 17

Appropriate national institutions must be entrusted with the task of planning, managing or controlling the environmental resources of States with a view to enhancing environmental quality.

Principle 18

Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind.

Principle 19

Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion

and responsible conduct by individuals, enterprises and communities and protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminate information of an educational nature on the need to protect and improve the environment in order to enable man to develop in every respect.

Principle 20

Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connexion, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries.

Principle 21

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 22

States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

Principle 23

Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.

Principle 24

International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big and small, on an equal footing. Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and elimi-

nate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

Principle 25

States shall ensure that international organizations play a coordinated, efficient and dynamic role for the protection and improvement of the environment.

Principle 26

Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.

21st plenary meeting
16 June 1972